683 other, the debate would continue for two days and three nights without food or sleep."[59] However, in most [692] cases, the chief or an elder was present to render judgment or to propose reconciliation. Judgment was based on precedent and it seems that the various trials and tortures mentioned above served chiefly to enable elders to reach a decision. Trials were open to the public and unless the elders sitting in judgment reached a unanimous decision no verdict could be handed down.[60] Execution of punishment was not necessarily carried out by the chief but was left up to the group and only when a case concerned the entire village or could not be settled by the group was the chief called upon for his decision. There were no set codes of punishment nor were there specific penalties meted out for specific crimes, instead retribution was imposed according to precedent and custom. For example, in regard to the penalty for adultery, that crime of which we find the most frequent mention in the records, the *Tōyū Zakki* [Miscellany of a Trip to the East] says, "In rare occasions where there is misconduct the man is not punished but the woman is beaten to death with a club and cast into sea." While there is some doubt that this was the standard punishment we find in a report by Nagata Hosei that adulterers were wrapped in a straw mat and thrown off a cliff into the sea,[61] which is a confirmation of the existence of the death penalty. The *Ezo Zakki Yakusetsu* remarks, "When a married woman committed adultery her hair was cut off and she was made a nun," while the *Ezo Dan Hikki* confirms the removal of the hair as punishment. "In general the law of the Ainu was not limited to the wife. If a man outraged a woman he was punished by having his hair torn out." Other cases seem to have been settled by fines. The *Hokkai Zuihitsu* [Notes on the Northern Sea Area] mention this: "When there was misconduct treasure was ordered to be given to the other party as a token of apology and as atonement for the crime." And in the *Igen Zokuwa:* "It was a serious matter when a married woman made illicit love. It resulted in atonement and the submitting of a great amount of treasure." From the *Watarishima Hikki:* "When adultery was exposed, the culprits were punished by law. However, at times, there would be an arbitration and the parties would be reconciled with the payment of atonement." According to Batchelor, cases were sometimes settled by *Ukaru* which will be discussed later.[62] The *Hokuto Sanjin Monogatari* [Hokuto Sanjin's Story] notes: "It is seldom that a woman will commit adultery. However, if it happens and becomes known to the husband he immediately cuts off his wife's nose. During my sojourn in that country I have seen only two or three

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[59] *Tokachi Shū Ryakusetsu.*
[60] *The Ainu and their folklore*, 237.
[61] Nagata Hosei, Ainu no shikei (Death penalty of the Ainu), *Keirin* 7: 28.
[62] *The Ainu and their folklore*, 241.

784 Ainu traditions about these.[56] To the Ainu the injunctions and traditions handed down from their ancestors were not to be violated and the chief of the village saw to it that they were maintained. Violations were punished in a manner that it was believed would appease the fury of God since it was held that the culprit already was undergoing a spiritual punishment. Those records which have been left concerning the punitive measures of the Ainu are limited to those which lay in the actual power of society to mete out and they do not bear on the important concept of punishment by God (for they believed that the violators of God's taboos were sufficiently punished by God himself and society did not interfere with this divine judgment but remedied only that which concerned itself). But as time passed the power of the taboo receded and the Ainu, in order to regulate their increasingly complex society adopted the same punishments for culprits that the Japanese practiced.

674 [192] 627 [696] The word "crime" in the Ainu language is either *Katopaku* ["to commit an offense which ought to be punished"] or *Uenburi* ["bad conduct"] and it seems that there existed no difference between a violation of the village law and a violation of religious morals. Therefore, penalty was imposed equally on all violations. Judgment of crime was sometimes made by mysterious means. There was the method of consulting the oracular wisdom of the maiden of a shrine[57] who was called *Tsusuguru* [a prophetress]. Judgments similar to the ancient Japanese *Kugatachi* wherein the accused takes a stone from boiling water with his bare hands were used and there was the judgment whereby bamboo grass was laid across the palm of the hand of the accused and atop the grass a red-hot stone or iron was placed. In the latter two methods any injury sustained by the accused was evidence of his guilt. The above were all practices in which it was considered that the judgment of God was being rendered. Torture was also used. The accused could be forced to down with one breath a large bowl of water. There was the tobacco torture which was chiefly used by women; there was the *Nttemere* [to stretch the arms] in which the accused was left with both arms outstretched and tied to a post; there was a combination of torture and religious ritual wherein the accused first drained a cup of water then the empty cup was placed atop his head. If he neither fell down nor the cup fell off his head he was set free.[58]

695 [1787] 683 Quarrels between two parties were resolved by debate. This was called *Charanke* [to argue] and if the winner could not be determined the debate continued furiously until one of the two collapsed. It has been said that, "If neither of the parties submitted to the

[56] Itō Yūichi, Hokubo minzoku no horitsu shisō oyobi kanshu (Customs and concepts of law in the North), *Shihō Kenkyū*, 17th ed., 26 ff.

[57] John Batchelor, *The Ainu and their folklore*, 284.

[58] *Ibid.*, 242–243.